

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ABEL P. REYES,

Petitioner,

VS.

DARRAL G. ADAMS,

Respondent.

No. C 07-3822 RMW (PR)

# ORDER OF DISMISSAL; DENYING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

(Docket No. 2)

Petitioner, a state prisoner proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner filed an earlier habeas action with this court, in case no. C 02-2096 RMW (PR), challenging the same conviction and sentence as in the instant petition. This court denied petitioner's earlier habeas petition on the merits on December 29, 2004. The United States Court of Appeals denied a certificate of appealability on July 22, 2005. Accordingly, the court will DISMISS the instant petition as a second or successive petition pursuant to 28 U.S.C. § 2244(b).

## DISCUSSION

A district court must dismiss claims presented in a second or successive habeas petition challenging the same conviction and sentence unless the claims presented in the previous petition were denied for failure to exhaust. See 28 U.S.C. § 2244(b)(1); Babbitt v. Woodford, 177 F.3d 744, 745-46 (9th Cir. 1999). A new factual basis for a claim

1 previously presented is not sufficient to prevent it from falling under this section. See id.  
2 at 746. Additionally, a district court must dismiss any new claims raised in a successive  
3 petition unless the petitioner received an order from the court of appeals authorizing the  
4 district court to consider the petition. See 28 U.S.C. § 2244(b)(2), (3).

5 Here, petitioner challenges the same conviction and sentence as the earlier petition,  
6 in case no. C 01-2096 RMW (PR), which was denied on the merits. He raises new  
7 claims, but he has not received an order from the United States Court of Appeals  
8 authorizing this court to consider the petition. Accordingly, this court must dismiss the  
9 instant petition in its entirety. See 28 U.S.C. § 2244(b)(1).

### 10 CONCLUSION

11 The instant petition is DISMISSED without prejudice to refile after obtaining the  
12 necessary authorization from the United States Court of Appeals to proceed with a second  
13 and successive petition pursuant to 28 U.S.C. § 2244(b)(1). In light of petitioner's  
14 payment of the filing fee, the motion for leave to proceed in forma pauperis (Docket No.  
15 2) is DENIED as moot.

16 The clerk shall terminate any pending motions and close the file.

17 IT IS SO ORDERED.

18 DATED: 2/22/08

  
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RONALD M. WHYTE  
United States District Judge

1 A copy of this ruling was mailed on 2/25/2008 to the following:

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3 Abel P. Reyes  
4 P-55763  
5 Pleasant Valley State Prison  
6 P.O. Box 8501  
7 Coalinga, CA 93210  
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